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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,187	02/14/2001	Tetsuro Motoyama	194543US-2	9855

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ALEXANDRIA, VA 22314

EXAMINER

ISMAIL, SHAWKI SAIF

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 09/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/782,187

Applicant(s)

MOTOYAMA ET AL.

Examiner

Shawki S Ismail

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. Claims 1-36 are presented for examination.

Information Disclosure Statement

2. The references in IDS received on 04-09-2001 have not been considered because examiner was not able to find it. Appropriate action is required

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims 1, 13, and 25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1, 9, 17, and 25 of U.S. Patent No. 6,662,225. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and Patent perform system monitoring and information collection regarding execution of target application in an application unit.

Rejections - 35 USC §102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 1-36 are rejected under 35 U.S.C. 102(e) as being anticipated by **Knight**, U.S. Patent No. **6,314,460B1**.

6. As to claim 1, 13, and 25, Knight teaches an object-oriented system for collecting information regarding execution of a target application in an application unit (col. 9, lines 51-53), the system comprising:

monitoring device having a plurality of monitoring components (col. 3, lines 17-25 and col. 9, line 62 – col. 10, line 11, the central manager contains a monitoring function and contains agents that monitors and gathers data from the host computer and returns it to the central manager);

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a target application interface configured to receive a plurality of monitoring requests from the target application for processing by the monitoring device (col. 3, lines 31-35 and col. 14, lines 10-40, the agents act as an interface unit between the monitored device and the monitoring system, which receives request to monitor the device and returns the results to the manger); and

a system resource having at least one system resource component, which is shared among the plurality of monitoring components using at least one abstract class (Fig. 7, col.10, lines 59-67, col. 11, lines 12-40, and col. 13, lines 1-39.)

7. As to claim 2, 14, and 26, Knight teaches the system according to claim 1, wherein the at least one system resource component includes at least one of a system clock, persistent system information storage, electronic mail transfer code and file transfer code (col. 12, lines 21-33, storing data redundantly.)

8. As to claim 3, 15, and 27, Knight teaches the system according to claim 1, wherein at least one of the plurality of monitoring components accesses the system resource using a system resource interface (col. 18, lines 13-40, the agents contain Local Library 1001 and network daemon 1002 obtain data needed by the monitoring system.)

9. As to claim 4, 16, and 28, Knight teaches the system according to claim 1, wherein the target application includes one of a software program being executed on a computer or workstation under control of a user, a software program driving a control panel of a business device, a software program driving a control panel of an appliance, software generating data regarding state changes within a device, and software generating data regarding state changes within an appliance (col.13, line 45 - col. 14, line 7.)

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10. As to claim 5, 17, and 29, Knight teaches the system according to claim 1, wherein the information regarding execution of a target application includes at least one of a user identification, an application identification, a cumulative session number, a value of a starting time, a value of a duration and an indication of a sequence of events with a corresponding elapsed time for each one of the events (col. 3 line 61-col. 4, line 6 and col. 30, lines 1-6.)

11. As to claim 6, 18 and 30, they contain similar limitations as claims 2 and 5, 14 and 17, and 26, and 29, respectively therefore they are rejected under the same rationale.

12. As to claim 7, 19 and 31, Knight teaches the system according to claim 1, wherein the monitoring device having a plurality of monitoring components includes an event logger and wherein the at least one system resource component includes a system clock, wherein the event logger accesses the system clock at least for recording a time of starting a monitoring session (col. 3 line 61-col. 4, line 6.)

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 8-12, 20-24, and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Knight et al., (Knight)**, U.S. Patent No. **6,314,460B1** and in view of **Kremen et al., (Kremen)**, U.S. Patent No. **5,706,434**.

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15. As to claim 8-12, 20-24, and 32-36, Knight teaches the system according to claim 1, wherein the central manager contains a monitoring function and contains agents that monitors and gathers data from the host computer and returns it to the central manager. However Knight does not explicitly teach wherein the transmitting device transmits formatted data according to a requested data format or a requested communication protocol.

Kremen teaches a method and apparatus to accomplish creation and serving of data objects. Kremen teaches a formatting of data received by a processor into a format that is recognizable by the end user and formats the data for outgoing transmission according to a protocol of an intended recipient (Abstract, col. 5, lines 20-59 and col. 7, lines 48-67.)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teaching of Knight and Kremen to incorporate a data formatter in order to offer diverse clients with different or varying capabilities to communicate and amongst each other (col. 2 line, 61 – col. 3, line12.)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawki S Ismail whose telephone number is 703-605-4362. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on 703-306-6662. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shawki Ismail
Patent Examiner
September 14, 2004




HOSAIN ALAM
SUPERVISORY PATENT EXAMINER